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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/600,250	06/20/2003	John W. von Holdt JR.	10778.00017	5554
22908	7590	11/01/2004	EXAMINER	
BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,250

Applicant(s)

VON HOLDT, JOHN W.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/11/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-4 and 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,619,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to provide the bucket with a single groove and the lid with a single tongue, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-17, 19 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jiradejnunt et al. (U.S. 5,730,309) in view of Luburic (U.S. 5,617,968). Jiradejnunt et al. teaches a bucket 10 having a first radially outwardly extending top rib 16 and a second side rib 18. The lid 30 includes a center panel, shown in figure 4, a depending skirt 32, a first locking flange 34 and a second locking flange 36. The tear strip is located below tear line 46. Jiradejnunt et al. does not teach that portion of the second flange remain for engagement with the second rib upon removal of the tear strip. Luburic teaches that it is known to provide a container where in the tear strip only removes portions of the locking flange (see figure 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Jiradejnunt et al. with the tear strip only removing portions of the second flange, as taught by Luburic, in order to allow the lid to remain firmly engaged on the container after removal of the tear strip.

5. Claims 2, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jiradejnunt et al. (U.S. 5,730,309) in view of Luburic (U.S. 5,617,968), as applied to claims 1, 15 and 19 above, and further in view of Widen et al. (U.S. 4,444,332). The modified assembly of Jiradejnunt et al. discloses the claimed invention except for the groove of the bucket which receives the depending tongue. Widen et al. teaches that it is known to provide a container with a groove which can receive a depending tongue (see elements 14 and 16). It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to provide the modified assembly of Jiradejnunt et al. with the container having grooves to receive the tongues, as taught by Widen et al., in order to provide a more secure seal between the container and lid.


Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Davolt (U.S. 3,881,627) is cited for the groove and depending tongue. The remaining prior art is cited for the locking flange on the tear strip.

7. This Action is Non-Final.

8. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Thursdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Receptionist at (703) 308-1148.


Niki M. Eloshway/nme
Patent Examiner
October 22, 2004